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30 June 1976

OGC Has

MEMORANDUM FOR: **Reviewed**

SA/L/DDO

SUBJECT: [REDACTED] Escrow Agreement.

1. You have asked my opinion of the subject escrow agreement as submitted by [REDACTED]. Generally, I find the agreement to be loosely constructed and with serious fault from the Agency point of view.

2. Section 3 of the agreement states, "All investment decisions shall be made solely by [REDACTED]. This provision suggests three problems.

a. Taxes - It is generally considered that the degree of control over particular assets or funds is determinative of tax liability. In this case, [REDACTED] has complete investment control over the principal of the escrow account even though it is in the nominal custody of the bank. Without extensive research into the matter, it is my opinion that the amount of control exercised would make the escrow principal taxable income to [REDACTED] in the first year.

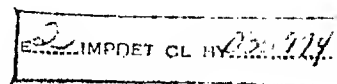
b. The investment control also generates the problem of [REDACTED] investing the principal in other businesses he may own, control, or acquire. By such manipulations, he could acquire the entire escrow principal within a year, leaving the bank holding worthless paper.

c. Also, if [REDACTED] made honest but faulty investment decisions, the escrow principal could quickly disintegrate. As past experience has shown, this could well put [REDACTED] back on our doorstep for more money in a short time.

3. Section 4 (substitute) is troublesome in that it is not sufficiently clear. It would be better if the section was rewritten in specific dollar amounts instead of fractions. The vesting of 1/15 of the principal each year can be read in several ways.

4. Sections 5 and 6 well collide depending upon the law of the jurisdiction of [REDACTED] estate. Section 7 does not state who shall pay the

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fees, costs and expenses incident to modification and/or revocation of the agreement. The same criticism is applicable to paragraph 8.

5. Section 9 would be better if registered, receipt notice was required with the effective date of such notice the date of the return receipt.

6. Section 11 seems to negate the responsibility of the parties to the agreement to notify the bank of suspected contraventions of the agreement. It would appear that the only method of informing the bank of suspected breach would be to file suit in the appropriate court. This is obviously not in the best interest of the Agency.

7. Section 12 - This is generally boiler plate that probably cannot be excluded even though it is not well written. 25X1C

8. The ancillary agreement appears to be a sham to permit [REDACTED] to avoid taxes. You might consider using a Secrecy Agreement alone in a contractual form and discarding the other agreement. Section 4 should state a dollar figure rather than a fraction as indicated in paragraph 3 above. Section 8 of the agreement appears to be, whether intended or not, a trap. Under the terms of section 8, if [REDACTED] persuades his doctor, rightly or wrongly, that he is totally disabled, the receipt by this Agency's instrumentality of certification of total disability would render the agreement to refrain from certain activities void and make the escrow principal non-forfeitable. If, for example, [REDACTED] has a serious heart attack, his right to 100% of the principal would vest absolutely. He could "accept employment or any similar relationship with any business entity which is in direct cooperation with xxx." He would also be free to "divulge any trade secrets or other information regarding xxx or any employees of xxx which would harm xxx in any way." He would be free to give any information prohibited in section 2 of the agreement. 25X1C

9. If an escrow agreement is considered the best vehicle for concluding the matter, I would recommend a more carefully written document that would detail specific permitted investments, appoint the escrow agent bank the power for investment discretion within specified limits and provide a better basis for protection of the principal. If I can be of any further assistance, please advise. 25X1C

AJP:ks

Distribution:

Original - Addressee

[REDACTED]
Office of General Counsel
Operations & Management Law Division

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MEMO TO: General Counsel and Deputy General Counsel
SUBJECT: Transmittal of DIVISION WORK

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The attached memorandum was prepared by JLP in the Operations & Management Law Division. I believe the holding opinion is legally correct and the memo has been proofread.

 It is for your signature/concurrence, page .
 I brought this matter to your attention as it came into the Office .


✓ I would normally bring it to your attention only as it goes out of the Office or to you for signature.

 The memo has gone out or to the file and I bring it to your attention only for information and review purposes.

I have classified or designated the memo:

✓ Secret
 Confidential
 Admin. Internal Use Only
 Unclassified

The memo should (should NOT) be permanent retention.


Chief, Ops. & Mgt. Law Div.

TO: GMB

AAL--

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Let's discuss
because:

JDM--

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Let's discuss
because

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